## REMARKS/ARGUMENTS

As a result of this Preliminary Amendment, claims 1-6 have been canceled, and new claims 7-9 are under active consideration in the subject patent application.

The Continuing Examination Application and this Preliminary Amendment have been filed in response to the Final Official Action mailed on May 1, 2008. The Director is hereby authorized to charge the RCE fee required under 37 CFR 1.17(e), namely $810, to Deposit Account No. 04-1679. In the Final Official Action, the Examiner had rejected claims 1, and 3-6 as being allegedly anticipated by the Parappa "the Rapper" reference ("Parappa") under 35 U.S.C. §102(b). In the Final Official Action, the Examiner had also accepted Applicants arguments that original claims 1-5 met the requirements of 35 U.S.C. §101.

The Examiner has continued, however, to rely upon the Parappa reference to reject claims 1-6. Applicant has introduced new claims 7-9 and canceled claims 1-6 in order to better distinguish the present invention from the teachings of Parappa. No new matter is believed to have been added to the application as a result of the introduction of new claims 7-9. Applicant provides a music game program that is stored on a computer readable medium that allows a computer to output music data corresponding to music selected by a player and to execute a procedure for displaying a background image corresponding to the selected music data on a display. Applicant's game program includes a music file for storing a plurality of the music data, where the music data includes song data with a melody being comprised of words and a melody corresponding to the words. The song data with melody comprises a plurality of partial

song data with melody that are obtained by dividing the whole words and the whole melody into a plural number that are arranged in their playback order. Each of the partial song data with melody is comprised of words having one or more characters and melody corresponding to the words. The music game program of the present invention also allows the computer to further execute a demand command computing procedure for (i) reading the music data corresponding to the music selected by the player, through an input means out of the music file, and (ii) computing a demand command for inviting the player to operate a specific operation key of the input means so as to correspond to each the partial song data with melody of the read music data. A command image producing procedure is provided for producing each of the demand commands as a command image that corresponds to each of the operation keys of the input means. A command image displaying procedure is provided for displaying the produced command image, that is moved on the display in the order of playback of the partial song data with melody, and for setting an operation criterion position at a predetermined position on the display and displaying it. A timing judging procedure is provided for judging as to whether or not the operation key was operated with a predetermined timing on the basis of a positional relationship between the displayed command image moving on the display and the operation criterion position. A music playback procedure is provided for arithmetically processing for changing a pitch, at the time of playback of the partial song data with melody, corresponding to the command image from a pitch which is stored in the music file according to a judgment result of an operation timing of the operation key corresponding to each of the command images by the timing judging procedure and for outputting through the sound output means. The timing judging procedure has an

accumulated evaluation value computing procedure for computing the time difference between a time the command image displayed moving on the display passes through the operation criterion position and a time the operation key was operated, for computing an evaluation point so as to correspond to the computed time difference, for obtaining an accumulated evaluation value by accumulating the evaluation point every demand command, and for storing the accumulated evaluation value in a memory means. The accumulated evaluation value computing procedure having a pass judgment procedure for subtracting a predetermined value from the accumulated evaluation value which has been accumulated by judging to be "pass" if the time difference is within predetermined bounds. The music playback procedure includes a start pitch change procedure for setting and playing back a start pitch, at the time of playback of the partial song data with melody, shifting from a standard pitch of the partial song data with melody which is stored in the music file as the accumulated evaluation value makes bigger.. The music playback procedure has a pass playback procedure for playing back the partial song data with melody with the standard pitch of the partial song data with melody, which is stored in the music file in spite of the accumulated evaluation value in the memory means when playing back the partial song data with melody which corresponds to the command image which is operated at a timing when the pass judgment procedure judges to be pass.

Unlike Applicant's invention, Parappa teaches that the pitch for playback of corresponding music data is changed only by the shift of the timing of when a player actually presses the operation key in some command. For this reason, it is necessary when utilizing the procedures of Parappa to listen to the playing of a player for some

longer time in order to know at which time the player actually pressed the key in overall music. In other words, in order to judge whether the "performance" is superior or not in overall music, a simple comparison is not possible with the methods taught by Parappa. In addition, the player does not acknowledge whether their "playing" is good or bad, and does not immediately judge their "playing" even if they listen to the played back music, since only operation timing, at some point of time, is reflected in the playback pitch.

Anticipation under 35 U.S.C. §102 requires that each and every element of the invention defined in the claim be met in a single prior art reference. Those elements must either be inherent or disclosed expressly, and must be arranged as described in the claim. See, Diversitech Corporation v. Century Steps, Inc., 850 F. 2d 675, 7 U.S.P.Q. 2d 1315 (Fed. Circuit 1988), Constant v. Advanced Micro-Devices, Inc., 848 F. 2d 1560, 7 U.S.P.Q. 2d 1057 (Fed. Circuit 1988), and Richardson v. Suzuki Motor Company, 868 F. 2d 1226, 9 U.S.P.Q. 2d 913 (Fed. Circuit 1989).

Nowhere within the four corners of the Parappa reference is there disclosure or even a vague suggestion of applicant's invention as defined by new claims 7-9. For example, Parappa fails to recognize the benefits associated with an accumulated evaluation value computing procedure that computes the time difference at the time when the player actually presses the button with the time the command image displayed to be moved on the display passes the operation criterion position as a standard. Also, Parappa doesn't even vaguely suggest computing an evaluation value which corresponds to the computed time difference, and accumulating the evaluation values each and every request command so as to obtain the accumulated evaluation value, and storing the obtained value in the memory.

Furthermore, in connection with the accumulated evaluation value, Parappa fails to teach that the pass judgment procedure should subtract a predetermined value from the accumulated evaluation value which has been accumulated by judging a "pass" if the time difference is within predetermined bounds, and the operation of the operation key from the start of playing, i.e., whether the "playing" is good or bad is always totally evaluated and accumulated as the accumulated evaluation value. Significantly, the accumulated evaluation value in this case is not simply a point, as in the Parappa system, but is a parameter which shows whether the "playing" is good or bad. Accordingly, the accumulated evaluation value of the present invention is accumulated if there is a mistake, and the accumulated evaluation value is subtracted if the key is pushed at a correct timing, i.e., the current "playing" technique by the player is always totally reflected in real-time.

Moreover, Applicant's playback procedure sets and plays back a start pitch at the time of playback of the partial song data with melody, shifting from a standard pitch of the partial song data with melody which is stored in the music file as the accumulated evaluation value grows larger. With these procedures, each partial song data with melody is played back such that the "playing" technique of the music by the player from the start to the current point of time is reflected. In other words, in case of bad "playing" having many operation mistakes, a melody is played back in such a heavy tone-deaf state that it is widely shifted from the standard pitch which is a normal playback pitch. On the contrary, in case of playing having small operation mistakes, the melody is played back in such a light tone-deaf state that it is rather shifted from the standard pitch which is a normal playback pitch. As mentioned before, the start pitch of the

melody to be played back is controlled so as to be proportioned to the standard pitch thereby reflecting the amount of the accumulated evaluation value which has been accumulated. For this reason, the playing skill of the player can be easily be judged when only listing to the melody which is played back. Such a feature of functionality can not be provided by the teachings of Parappa where only key operation timing at some point of time is reflected. If the song data is played back on the basis of the accumulated evaluation value, each player's skill is made clearer. However, the player's incentives to play well may be damaged since the pitch is shifted from the standard pitch even if the "playing" is at a correct timing till the accumulated value becomes zero once the accumulated evaluation value is accumulated. As a consequence, the pass playback procedure plays back the partial song data with melody with the standard pitch of the partial song data with melody which is stored in the music file in spite of the accumulated evaluation value in memory when playing back the partial song data with melody which corresponds to the command image which is operated with a timing when the pass judgment procedure judges to pass. If the player operates the operation key at a correct timing, a melody is controlled for being played back at a correct standard pitch in spite of the quality of playing in the past in order to maintain a player's desire and incentive to improve and to maintain their interest in the game. The Parappa reference does not provide for such control, since in Parappa 's methods rely upon only key operation timing at some point of time.

In view of the foregoing, Applicant respectfully submit that claims 7-9 are in condition for allowance. Favorable reconsideration is therefore respectfully requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

If a telephone conference would be of assistance in advancing prosecution of the above-identified application, Applicant's undersigned Attorney invites the Examiner to telephone him at **215-979-1255**.

Respectfully Submitted,

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/Samuel W. Apicelli/
Samuel W. Apicelli
Registration No. 36,427
Customer No. 08933
DUANE MORRIS LLP
30 S. 17th Street
Philadelphia, PA 19103-4196
Tel: 215-979-1255